

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.5288 OF 1992

1. Yusuf Fakir Mohd. Kumbharlikar
2. Abdul Kadir Fakir Mohd. Kumbharlikar
3. Hashimali Fakir Mohd. Kumbharlikar
through Constituted Attorney Habiba Haji
Kadar Kumbharlikar Petitioners.

V/s

1. The Bombay Electric Supply &
Transport Undertaking of the
Municipal Corporation of Greater
Bombay
2. The Competent Authority Welfare
Officer, appointed under the
Provisions of Bombay Municipal
Corporation Act, 1888, having his office
at BEST Bhavan . . . Respondents.

Ms. Swati Paradkar for the petitioners.

Mr. H. Teer i/b N/s Crawford Bayley & Cor for the
respondents.

CORAM : D.G. DESHPANDE, J.

DATE : 10TH OCTOBER, 2006.

P.C.

. The petitioners are occupants of certain premises of the respondent No.1 Bombay Electric Supply and Transport Undertaking. The father of petitioners No.1 was the original occupant. There is a history of litigations between the petitioners and respondent No.1.

However, on and from 10th September, 1980 an agreement came to be executed between Fakir Mohamed Baba, father of the petitioners and respondent No.1 and Fakir Mohamed Baba was permitted to occupy the premises for 5 years only. An agreement is at Exh."1" of the petition. During those period of 5 years Fakir Mohd. Baba expired. His legal heirs were continued to occupy the premises. The premises were visited by officers of the respondent No.1. They found that the petitioners were, in addition to the business of Laundry, were also carrying on the business of tailoring. Whatever that may be, after the period of 5 years was over, the notice came to be given by the respondent No.1 under section 105 (1)(b) of the Bombay Municipal Corporation Act, calling upon the petitioners to vacate the premises. That notice is dated 7th November, 1989. It was followed by another notice dated 4th April, 1990

2. Then eviction proceedings were started under the B.M.C. Act before the competent authority. The petitioners resisted the claim on the grounds, that firstly, they are legal heirs of deceased Fakir Mohd. Baba and secondly, on the ground that doing the business of tailoring is not in contravention of the agreement

because they had not stopped doing business of laundry. The petitioners lost before the competent authority as well as before the appellate authority and therefore, this petition.

3. Advocate for the petitioners tried to raise some points. According to her, after death of Fakir Mohd. Baba, his legal heirs i.e. petitioners became entitled to occupation, possession and continuation of the lease and they cannot be ousted, if they are ready to abide by the terms and conditions. She relied upon the judgment of this Court reported in **AIR 159 Bombay 429 (Sheshrao Parsharam V. Yeshwant Ambusa and others)**. Paras 9 and 10 of this judgment are referred to by her in particular. In this Judgment it is held that " Possession of a tenant after the expiry of the lease in his favour is juridical possession and is protected by law." This Judgment is related to the agricultural lands and as such it has no application to the facts of the present case. As against this Advocate for the respondent relied upon the case reported in **(1997) 9 SCC 220 (Ashok Caterers V. Municipal Corporation of Greater Bombay (Best undertaking)**. In that case also the petitioner was a lessee of Municipal Corporation on

monthly basis for 5 years. But the petitioner has accepted the terms of 5 years. However, after the expiry of the lease by efflux of time tenancy was determined, summary proceedings were started and eviction order came to be passed.

4. Petitioner filed an appeal before the Civil Court and the Civil Court affirmed the order and then petitioner went to the High Court. After losing before the High Court it must have been before the Supreme Court. The Supreme Court in its Judgment clearly held after considering the provisions of Section 105(b) of the Act that:-

" Occupation of Corporation premises without authority for such occupation is an unauthorised occupation. Such occupation includes continuance in occupation by a person after the the authority under which he occupied the premises has "expired" or it has been "duly determined". The definition thus includes not only a tress-passer whose initial and continued occupation has never been under any valid authority, but it also includes in equal measure a person whose occupation at its commencement was under authority, but such authority has since expired.....".

. From the aforesaid observations of the Supreme

Court, Counsel for the respondent No.1 urged that there is no merit in this petition because the occupation of the petitioners is totally illegal, unauthorised and therefore, by virtue of section 105(1)(b) two Courts below rightly rejected the claim of the petitioners.

5. Since the facts of the Supreme Court case and the present case are same and issues involved also are same, consequently it is to be held that the appellate authority has rightly rejected the claim and contention of the petitioners. There is no merit in this petition, it is required to be dismissed.

6. The Counsel for the petitioner contended that some reasonable time be granted to the petitioner to vacate the premises. Counsel for the respondent contended that the enquiry into mesne profit be ordered to be held under the provisions of Section 105(c) of Bombay Municipal Corporation Act. It is to be noted that in the Supreme Court Judgment referred above, six months' time was granted to the petitioner to vacate and hand over the possession. Hence, the order:-

ORDER

A. Petition is dismissed.

B. Rule discharged.

C. Time is granted to the petitioners to vacate the premises on or before 28th February, 2007 on condition that all the petitioners shall give an undertaking to this Court within 4 weeks from today. The authority to hold the enquiry as to the mesne profit from the date of occupation of the petitioners over the premises become unauthorised.

D. No order as to costs.

(D.G. DESHPANDE, J.)